IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

OP.No. 14038 of 2002(U)

PETITIONER:

AGI JOSEPH, KOYICKAL, PAYATTUPAKKA,
KAINADY P.O.,ALAPPUZHA DISTRICT.

BY ADV. SRI.JOHN VARGHESE.

RESPONDENTS:
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1. **KERALA STATE,REPRESENTED BY THE CHIEF SECRETARY,THIRUVANANTHAPURAM.**
2. **THE MANAGING DIRECTOR,KERALA WATER AUTHORITY,THIRUVANANTHAPURAM.**
3. **THE ASSISTANT ENGINER,KERALA WATER AUTHORITY,KOTTAYAM.**
4. **THE SECRETARY,NATTAKAM GRAMA PANCHAYAT, NATTAKOM,KOTTAYAM.**

BY ADV. SRI.M.DINESH, SC, KWA,
ADV. SRI.LIJI.J.VADAKEDOM.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 23638/2002 IN O.P. NO. 14038/2002-U

DISMISSED

02/08/2007. **SD/- PIUS C.KURIAKOSE, JUDGE.**

APPENDIX

PETITIONER'S EXHIBIT:

EXT.P.1: COPY OF THE PETITION IN O.P. (MV). NO. 848/2002 OF THE M.A.C.T. KOTTAYAM ALONG WITH ORDER DTD. 22/05/2002.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

O.P. No. 14038 OF 2002

Dated this the 2nd day of August, 2007

J U D G M E N T

In this writ petition under Article 226 the petitioner who had viled a claim petition before the Motor Accidents Claims Tribunal, Ernakulam as O.P. No.848/02 under section 110 of the Motor Vehicles Act challenges the order of the M.A.C.T. Kottayam refusing to entertain the claim petition on the ground that the Tribunal has no jurisdiction to entertain the petition and on that reason returned the petition for presentation before the proper court. The petitioner is an advocate by profession and according to him while he was riding his scooter KL- 4/K-5621 on 13-4-2002 at about 2.30 p.m. in between St.John's Knanaya Catholic Church and St.John's Puthenpally, Chingavanam the vehicle fell into a pit dug across the road by the Water Authority in front of the Telecom (BSNL) depot office. According to him, after the fell, the vehicle got skid and fell into the gutter in the tarred portion, as a result of which he sustained serious injuries on various parts of his body. Respondents in the claim petition were the State, the Managing Director, Kerala Water Authority, The assistant Engineer, Kerala Water Authority and the Secretary of the Nattakam Grama Panchayat.

2. Contention of the petitioner is that since the accident occurred on account of the user of a motor vehicle, the Tribunal had sufficient power to adjudicate on the claim which was for compensation for injuries sustained. The Motor Accidents Claims Tribunal being a special Tribunal constituted for the expeditious disposal of the Motor Accidents Claims Tribunal, the Tribunal should have entertained the claim petition rather than relegating the petitioner to common law remedies.

3. Separate counter affidavits have been filed by the Panchayat as well as by the Water Authority denying their liabilities and justifying the order of the Tribunal refusing to entertain the petitioner's claim petition. Extensive arguments were addressed before me by Sri.John Varghese, learned counsel for the petitioner, Sri.Lijy V.Vadakkedan, Counsel for the Panchayat and also by Sri.M.Dinesh, standing counsel for the Water Authority. Sri.John Varghese would place reliance on various decisions. The judgment of the Supreme Court in New India Insurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840, that of this court in United India Insurance Co. v. P.M.Thomas, 1999(1) K.L.J. 178 and another judgment of this court in Padmanabhan Nair v.Narayanikutty, 1987 (2) KLT 370 and the judgment of the Supreme Court in (1991) 3 SCC 530 were among the various decisions cited by

Sri.John Varghese. Sri.Sri.Ligy Vadekkadan per contra would rely on the judgment of the Supreme Court in Oriental Insurance Co. Ltd. v. Meena Variyal and others, (2007) 5 SCC 428.

4. Having considered the rival submissions addressed at the Bar in the light of the ratio emerging from the various decisions which were cited at the Bar I am of the view that the Tribunal was justified in directing the petitioner to institute a regular suit before a competent civil court. Reiterating the Tribunal's view I relegate the petitioner to his remedy before a competent civil court. The time during which the M.V.O.P. was pending before the Tribunal and the writ petition was pending before this court and a further period of one month from receiving a copy of this judgment will be excluded for reckoning the period of limitation in view of section 46 of the Limitation Act.

(PIUS C.KURIAKOSE, JUDGE)

ksv/

PIUS C. KURIAKOSE, J.

O.P. No. 14038 of 2002

JUDGMENT

2nd August 2007